

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

HB 9005

October 26, 2021

SUMMARY OF BILL: Prohibits a local board of education or a public school from mandating or requiring students to wear a mask. Requires a public school to provide a reasonable accommodation, upon written request, to a student, teacher, or employee of the public school who desires to be placed in a setting where individuals who may come within six feet of each other are wearing a mask. The principal must provide a decision in writing as to the approval or denial of the request for reasonable accommodation. Requires, upon approval of the request, for a student, teacher, or employee in an in-person educational setting in which all persons who may come within six feet of another within that educational setting to wear a school provided N95 mask. Authorizes public schools to adopt policies necessary to accommodate persons protected under the Americans with Disabilities Act.

Prohibits a local board of education or public school from using state funds to mandate or require students to wear a mask in violation of this legislation. Authorizes the Commissioner of Education to withhold future distributions of public-school funds from the local education agency (LEA) or public charter school in the amount of the state funds used by the local board of education or public charter school in violation. Also, authorizes the Attorney General and Reporter to initiate legal proceedings to recover all state funds used in violation.

A local board of education or public school that violates the provisions of the bill is ineligible to receive an appropriation, grant, or other funds from this state until the local board of education or public school is in compliance.

ESTIMATED FISCAL IMPACT:

Other Fiscal Impact – The provisions of the bill could jeopardize federal American Rescue Plan funds allocated for state use. The amount and timing of the funds that will be jeopardized is unknown and cannot reasonably be determined.

Assumptions:

- The American Rescue Plan Act of 2021 (ARP) includes language requiring LEAs to submit plans for the safe return of students to in-person instruction.
- The Interim Final Rule requires that an LEA's plan must include how it will maintain the health and safety of students, staff and teachers and the extent to which it has adopted policies and the description of such policies on *each of the Center for Disease Control's (CDC) safety recommendations including: universal and correct wearing of*

masks. While the requirement does not mandate that an LEA adopt the CDC guidance, it does require the LEA to describe in its plan the extent to which it has adopted the key prevention and mitigation strategies identified in the guidance. LEAs are also to follow state health department guidance.

- CDC guidance updated August 5, 2021 for COVID-19 prevention in K-12 schools includes recommending the universal indoor masking by students (age 2 and older), staff, teachers, and visitors to K-12 schools, regardless of vaccination status.
- The state was required to submit and receive approval for a plan which included support to LEAs in safely reopening schools and sustaining their safe operation. In the state's plan for supporting LEAs, the first mitigation strategy is the universal and correct wearing of masks. The state Department of Education provided the following stance:
 - *Disseminate current CDC and Tennessee Department of Health (TDOH) guidance and recommendations for correct use of masks; provide technical assistance and training, when requested, on proper use of masks, including support to LEAs and schools on identifying adaptations and alternatives for staff and students who cannot correctly wear masks or need accommodations; provide direct support to LEA lead nurses to enable them to provide technical assistance to their schools in supporting this primary prevention strategy.*
- The U.S. Department of Education issued a letter dated August 18, 2021 suggesting the federal Department of Education is monitoring that the state is meeting its federal fiscal requirements.
- It is unknown if and when the federal Department of Education would withhold or recoup federal funds as a result of the proposed legislation. Should the federal funds be jeopardized, it would most likely be a percentage of the state administrative or emergency needs which are approximately \$75 million.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Krista Lee Carsner, Executive Director

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